UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 73-1189

United States of America,

Appellee,

v.

Ollie Herman Lincoln, Jr.,

Appellant.

Appeal from the United States District Court for the District of Maryland, at Baltimore. Joseph H. Young, District Judge.

(Argued October 4, 1973 Decided November 5, 1973)

Before Bryan, Senior Circuit Judge, Russell and Widener, Circuit Judges.

Arthur M. Reynolds (Arthur G. Murphy, Sr., on brief) for Appellant; Michael E. Marr, Assistant United States Attorney, (George Beall, United States Attorney, on brief) for Appellee.

PER CURIAM:

Convicted under 18 USC App. 1202(a) of possessing and receiving firearms in interstate commerce after having previously (on October 17, 1968) been convicted of a felony, Oilie Herman Lincoln, Jr. appeals. His only substantial assignments of error are: (1) that, admittedly, one of the three weapons described in the one-count indictment had not been transported in interstate commerce since the enactment of the criminal statute on June 19, 1968; and (2) that the felony of which he had been convicted was wilful tax evasion, 26 USC 7201, not a crime of violence and, therefore, not the type of felony contemplated by the statute.

On consideration of the record and arguments of counsel, orally and on brief, we find the assignment of error without merit and affirm the conviction. *U.S. v. Giannoni*, 472 F.2d 136 (9 Cir.), cert. denied 411 U.S. 935 (1973); see *U.S. v. Mullins*, 476 F.2d 664 (4 Cir. 1973); 18 USC App. 1202(c)(2) defining "felony"; *U.S. v. Mancino*, 474 F.2d 1240 (8 Cir.), cert. denied (June 18, 1973).

AFFIRMED.

INDICTMENT

The Grand Jury for the District of Maryland charges:

That on or about the 12th day of October, 1971, in the State and Judicial District of Maryland,

OLLIE HERMAN LINCOLN, JR.

having been convicted of a felony by the United States District Court for the District of Columbia, that is wilfully attempting to evade and defeat income taxes in violation of Title 26, United States Code, Section 7201, knowingly possessed, received, and transported in commerce and affecting commerce three firearms, that is one Marlin .30-.30 model 336–RC lever action rifle, serial number P 22780, one Smith and Wesson model 32-1 .38 revolver, serial number R 28520, and one Smith and Wesson .32 revolver, serial number H 29652; all in violation of Section 1202(a), Title 18, App. and Section 2, Title 18, United States Code.

George Beall,
United States Attorney

A TRUE BILL:

Foreman

IN THE

Supreme Court of the United States

October Term, 1973

No.

OLLIE HERMAN LINCOLN, JR. *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

CERTIFICATE OF SERVICE OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

I hereby certify that a copy of the Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit was served by mail, postage prepaid this 5th day of December 1973, upon Robert H. Bork, Solicitor General, Department of Justice, Washington, D.C. 20530 and Michael E. Marr, Assistant U. S. Attorney, U. S. Court House Building, Baltimore, Maryland, attorneys for respondent.

Arthur M. Reynolds
Attorney for Petitioner
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